

**STATE OF INDIANA
CIVIL RIGHTS COMMISSION**

PATTY J. HOCKETT,
Complainant,

vs.

**DOCKET NO. HOsh94091143
HUD NO. 05-94-1469-8**

KENNY SINGLETON,
Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER**

On December 31, 2001, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision"). On January 31, 2002, Respondent, Kenny Singleton ("Singleton"), filed his Petition For Administrative Review. On February 5, 2002, Complainant, Patty J. Hockett ("Hockett"), filed her Motion To Strike Respondent's Petition For Review. On February 13, 2002, Singleton filed Respondent Kenny Singleton's Objection To Complainant Patty J. Hockett's Motion To Strike Respondent's Petition For Administrative Review.

Having carefully considered the foregoing and being duly advised in the premises, ICRC finds and rules as follows.

1. The proposed decision was issued on December 31, 2001. It was served the same day, as is noted on pages 9 and 10 of the proposed decision.
2. Singleton's Petition was filed with ICRC on January 25, 2002.
3. The provision of the Administrative Orders and Procedures Act, IC 4-21.5 (AOPA) concerning review of a proposed decision provides as follows:

(d) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this chapter and must object to the order in a writing that:

(1) identifies the basis of the objection with reasonable particularity; and

(2) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is **served** on the petitioner.

IC 4-21.5-3-29(d). (Emphasis supplied).

4. This provision was summarized in Conclusion Of Law 17 of the proposed decision.

5. Because the time for seeking administrative review starts with service, the following provisions of the AOPA are applicable:

(c) A period of time under this article that commences when a person is served with a paper, including the period in which a person may petition for judicial review, commences with respect to a particular person on the **earlier** of the date that:

(1) the person is personally served with the notice; or

(2) a notice for the person is deposited in the United States mail.

IC 4-21.5-3-2(c). (Emphasis supplied).

and

(e) If a notice is served through the United States mail, three (3) days must be added to a period that commences upon service of that notice. IC 4-21.5-3-2(e).

6. Singleton's Petition, then, was due to be filed on or before Friday, January 18, 2002.

7. Singleton's Petition asserts that the proposed decision was received on January 11, 2002 and this might seem to suggest an unduly short period within which to seek administrative review. A more complete perspective must also consider the following factors.

A. Singleton could have requested an extension of time to seek administrative review. *Charles A. Beard Classroom Teachers Association v. Board of School Trustees of Charles A. Beard Memorial School Corporation*, (Ind. 1996), 668 N.E.2d 1222.

B. The Petition would have been deemed filed when mailed if filed by certified

mail. *State ex. rel. Goodman v. Review Board of the Indiana Department of Employment and Training Services*, (Ind. 1989), 536 N.E.2d 1023.

8. Singleton's Petition For Administrative Review is untimely filed.

IT IS, THEREFORE, ORDERED

1. Hockett's Motion To Strike Respondent's Petition For Administrative Review is **GRANTED**.

2. ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

INDIANA CIVIL RIGHTS COMMISSION

**STATE OF INDIANA
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Complainant,

vs.

**DOCKET NO. HOsh94091143
HUD NO. 05-94-1469-8**

KENNY SINGLETON,

Respondent.

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

A Hearing was held before Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") on July 11, 2001. Complainant, Patty J. Hockett ("Hockett"), was present and was represented by counsel, Martha Kenley, ICRC Supervising Attorney. Respondent, Kenny Singleton ("Singleton"), was present and was represented by counsel, Gaylen W. Allsop of the ALLSOP LAW FIRM of Mishawaka.

Complainant's Exhibit 1 ("CX__") through CX23, inclusive, and Respondent's Exhibit A ("RX_") through RXT, inclusive, were admitted into evidence by stipulation. After opening statements were made, Hockett testified on her own behalf and then called Cindy Whitt, Linda Glon Kotowski, and Singleton to testify. After Hockett rested her case, Singleton testified on his own behalf and also called Larry Browne, after which he rested his case. Hockett elected not to present any evidence in rebuttal.

The ALJ took the cause under advisement and ordered that the parties file what they suggested that the ALJ enter as proposed findings of fact, conclusions of law, and

order on or before August 20, 2001. The ALJ also ordered that briefs could be filed on or before the same date. This deadline was extended twice, the last time to September 7, 2001.

On September 4, 2001, Singleton filed his Brief Of Kenny Singleton and [Respondent's Suggested Proposed] Findings Of Fact, Conclusions Of Law And Order. On September 7, 2001, Hockett filed her Post Hearing Brief In Support Of Complaint Of Discrimination and [Complainant's Suggested] Proposed Findings [Of Fact, Conclusions Of Law,] And Order.

Having carefully considered the foregoing and being duly advised in the premises, the ALJ proposes that ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Hockett is an adult woman, 40 years of age at the time of the Hearing. She has resided, at all material times, in the state of Indiana.
2. Singleton is a middle aged adult male. He owns the home on Quinn Road in North Liberty, Indiana ("the home") out of which this case arose. This home is located on a plot of land farmed by Singleton. At this site, there are approximately 40 acres of land. Singleton farms approximately 700 acres.
3. The issues to be resolved are all issues arising under the Indiana Fair Housing Act, IC 22-9-5 ("the IFHA"), and are summarized as follows:
 - A. Was Hockett denied the use and enjoyment of a rented house because of gender?;
 - B. Was Hockett denied the use and enjoyment of a rented house because of sexual harassment?; and
 - C. If either or both of those issues is resolved in Hockett's favor, what relief should be awarded?

SECOND PRE-HEARING ORDER ¶3 (June 20, 2001).

4. Hockett and her husband, Bob, initially rented the home from Singleton in 1986. A couple of months after they moved in, Hockett had her first child, a son. In 1988, a daughter was born and Hockett, Bob, and the children resided in the home as a family until 1992 when Bob and Hockett separated. Hockett and the children remained in the home after Bob moved out in May of 1992 and Bob and Hockett were eventually divorced.

5. After Bob moved out, the relationship between Hockett and Singleton, which had been businesslike, changed. Singleton made a number of unsolicited and inappropriate comments to Hockett. Examples include the following:

If you knew how to take care of Bob, you wouldn't have lost him. You don't know how to take care of a man.

There was a time that there was a woman with kids, and at that time I didn't want to deal with anyone with kids, but now I'm ready.

Something must have happened to you in your past. You look like you need a hug. Can I hug you?

You're dating, right? I know you're dating.

You need a man.

I know you're dating, so why not date me? We should go out to dinner.

What do you say?

Many of these comments were made to Hockett as Singleton was attempting to enter her rented home. Singleton had never made comments such as these when Hockett was living with her husband.

6. After Bob left, Singleton also wrote Hockett notes and letters indicating that he needed to talk to her about his personal problems. This, too, had not occurred while Hockett's husband had been living in the home.

7. Singleton told Hockett, both orally and in writing, that she "had to be nice", had to wave to him when they passed on the road, and "had to be his friend". Singleton threatened that if she did not want to get along, she could move and that he would move her out if she did not act like she should.

8. Singleton discouraged male visitors to Hockett's home. He told her that if she had any overnight guests he would raise the rent. The rent had not decreased when Bob moved out.

9. Hockett believed that Singleton was stalking her. He frequently appeared on the

premises when she pulled into the driveway or arrived home from work.

10. On at least 2 occasions, Singleton used his key to enter the home, unannounced and without notice. One of those times, Hockett was in the shower. The other time, she was sleeping in her bed. In response to these incidents, Hockett had a deadbolt lock installed and started sleeping with a knife under her bed.

11. Singleton and Hockett's father are second cousins, but they did not, and do not, have a close relationship. One time when Hockett's father was visiting, Singleton told her that she "would go around the yard in [her] bathing suit shaking [her] ass like [she] wanted him". Hockett's father did not defend her because he knew that Singleton had engaged in violent behavior in the past. This made Hockett, who was already afraid of Singleton, even more fearful.

12. In 1994, Hockett's home was broken into and ransacked. The only items missing were a file containing the lease and some letters from Singleton, her answering machine with the tape in it, and some blank personal checks. Jewelry, a stereo, a VCR, and a television were not taken. When Hockett returned home, the door was still locked but the dining room window was unlatched. Singleton was the only other person with a key to the home.

13. Sometime after that break-in, Singleton visited Hockett's parents. He told them that she was drinking too much as evidenced by the empty beer cans in her trash barrels, and that she was receiving many messages on her answering machine from different men.

14. On two occasions, Singleton gave Hockett money. One time the money was for Christmas presents for the children. The other time was for Hockett to buy tires for her car. Hockett did not ask for this money.

15. After Bob moved out, Singleton chose to do extensive remodeling of the home. This caused him to be present at the home even more frequently than before. In the midst of this remodeling, Singleton asked Hockett to accompany him to the store to choose the kitchen tile.

16. Throughout all of this, Hockett repeatedly asked Singleton for privacy and to keep the relationship businesslike. These requests, obviously, did not achieve that result.

17. Clearly, Singleton's overtures and other behavior toward Hockett were inextricably intertwined with the fact that she was female.
18. In the period between Bob's departure in May of 1992 and the time in July of 1994 when Hockett moved out of the home, Hockett and her children spent between 30 and 45 nights at her sister's home in South Bend because of her fear of Singleton.
19. Hockett did not want to move from the home because she wanted to maintain a stable environment for her children. At one point, she could no longer tolerate the situation and made attempts to find alternate housing. At that time, she did not find anything suitable.
20. In August of 1994, Hockett moved out of the home. She paid Singleton all rent and utilities owed.
21. Hockett felt intimidated and harassed by Singleton for a period of approximately 2 years and the effects of this behavior continue.
22. As a result of her experience with Singleton over the 2 year period, Hockett still erects emotional barriers that prevent forming relationships with others.
23. Hockett's experience with Singleton caused her to seek counseling for herself and her children.
24. Singleton's conduct was extremely pervasive although it was for the most part not terribly severe. (The most egregious acts of Singleton were entering the home while Hockett was in bed, entering while she was in the shower, and the comment to her father. On the other hand, there is no evidence of any actual or attempted touching.) Singleton's conduct was sufficiently severe and pervasive to alter the terms and conditions of Hockett's tenancy.
25. Singleton's sexual harassment of Hockett made her unable to continue her tenancy in the home.
26. Singleton's conduct was intentional and done in wanton and reckless disregard of the rights and feelings of Hockett. For this reason, it is appropriate to impose a civil penalty.
27. There is no evidence that Singleton has been found liable for a prior violation of the

IFHA.

28. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. ICRC has jurisdiction over the subject matter and the parties.
2. Hockett and Singleton are each a “person” as that term is defined in the IFHA. IC 22-9.5-2-11.
3. The IFHA provides, in material part,:
A person may not discriminate against any person in the terms, conditions, or privileges of ... rental of a dwelling, or in providing services or facilities in connection with the ... rental of a dwelling because of ... sex
IC 22-9.5-5-1(b).
4. In interpreting statutes that ICRC enforces, it is appropriate to consult cases decided under analogous federal statutes for guidance. *Indiana Civil Rights Commission v. Alder*, 714 N.E.2d 632 (Ind. 1999).
5. The federal counterpart to the IFHA is Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments of 1988, 42 U.S.C. §§3601 - 3631 (“Title VIII”).
The section of Title VIII comparable to IC 22-9.5-5-8 provides that:
... it shall be unlawful
...(b) To discriminate against any person in the terms, conditions, or privileges of ... rental of a dwelling, or in the provision of services or facilities in connection therewith, because of ... sex
42 U.S.C. §3604(b).
6. Under Title VIII, sexual harassment has been recognized as a form of unlawful discrimination because of sex. *Honce v. Vigil*, 1 F.3d 1085 (10th Cir. 1993). There are two forms of sexual harassment. One is “hostile housing environment” harassment and involves unwelcome conduct of a sexual nature that is sufficiently severe or pervasive to unreasonably interfere with the use and enjoyment of the premises. The other is *quid pro*

quo sexual harassment, in which housing benefits are explicitly or implicitly conditioned on sexual favors. *Honce, supra*.

7. Singleton's unwelcome conduct by of a sexual nature toward Hockett was sufficiently severe and pervasive that it unreasonably interfered with Hockett's use and enjoyment of the premises, thereby constituting sexual harassment. As a result, that conduct amounted to discrimination against Hockett because of sex in violation of IC 22-9.5-5.1(b) and was a "discriminatory housing practice" as that term is defined in IC 22-9.5.2-7.

8. Singleton also committed sexual harassment of the *quid pro quo* variety as against Hockett. This, too, constituted sexual harassment. As a result, that conduct amounted to discrimination against Hockett because of sex in violation of IC 22-9.5-5.1(b) and was a "discriminatory housing practice" as that term is defined in IC 22-9.5.2-7.

9. Singleton, by his behavior, intimidated, threatened and interfered with Hockett in the exercise of her right to occupy a dwelling free from discrimination because of sex. This is a violation of IC 22-9.5-5-8(1) and was a "discriminatory housing practice" as that term is defined in IC 22-9.5.2-7.

10. The IFHA provides:

(a) If the commission determines at a hearing under section 14 of this chapter that a respondent has engaged in ... a discriminatory housing practice, the commission may order the appropriate relief, including actual damages, reasonable attorney fees, court costs, and other injunctive or equitable relief.
IC 22-9.5-6-15(a).

11. "Actual damages" includes compensation for emotional distress. *Alder, supra*.

12. ICRC's awards for emotional distress are based upon the particular circumstances of each case, and have varied from as low as \$80 to as high as \$25,000.

13. In *Beard v. Dotson*, DOCKET NO. HOra94101216 (December 14, 2001), ICRC awarded \$10,000 for emotional distress to a 14 year old Black male who was assaulted with racial epithets and sprayed with mace because he and his family had moved into a neighborhood that was all White. Various acts of vandalism followed, although they could not be definitively tied to the respondent. While the instant situation is serious, it does not

appear to be as serious as the *Beard* case. In the circumstances of this case, it is appropriate to award Hockett \$7,500 for emotional distress.

14. The IFHA also provides:

(b) To vindicate the public interest, the commission may assess a civil penalty against the respondent in an amount that does not exceed the following:

(1) Ten thousand dollars (\$10,000) if the respondent has not been adjudged by order of the commission or a court to have committed a prior discriminatory practice.

...
IC 22-9.5-6-15(b)(1).

16. It is appropriate that ICRC reserve the maximum penalty for the most severe misconduct. To do this and recognizing that Singleton's conduct was objectively unacceptable and had serious consequences to Hockett and her children, it is appropriate to assess a civil penalty of \$7,500.

16. "[O]ther injunctive or equitable relief", as authorized by IC 22-9.5-6-15(a), includes requiring a respondent found to have violated the IFHA to undergo training designed to prevent a repeated violation.

17. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis for each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).

18. Any Finding Of Fact that should have been deemed a Conclusion Of Law is hereby adopted as such.

ORDER

1. Singleton shall cease and desist from interfering with any person's exercise of their housing rights under the IFHA.

2. Singleton shall cease and desist from unreasonably interfering with a tenant's use

and enjoyment of a rented dwelling by subjecting the tenant to severe or pervasive unwelcome conduct of a sexual nature.

3. Singleton shall cease and desist from threatening to take adverse action against a tenant for failure to accede to unwelcome requests of a sexual nature.
4. Singleton shall attend a professionally developed seminar approved by ICRC's Executive Director addressing the recognition, elimination, and treatment of unlawful sexual harassment. Singleton shall request the Executive Director's approval no later than 150 days after the effective date of this Order and shall have attended the seminar no later than 300 days after the effective date of this Order. Proof of attendance shall be filed with ICRC within 30 days after attendance at the seminar.
5. Singleton shall, within 30 days of the effective date of this Order, deliver to ICRC a certified check payable to ICRC as escrow agent for Hockett, in the amount of \$7,500.
6. Singleton, within 30 days of the effective date of this Order, deliver to ICRC a certified check payable to the State of Indiana in the amount of \$7,500, this amount being a civil penalty assessed against Singleton.
7. This Order shall take effect immediately after it is signed and approved by a majority of the members of ICRC, unless it is modified by ICRC under IC 4-21.5-3-31(a), stayed by ICRC under IC 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated: 31 December 2001

Robert D. Lange
Administrative Law Judge

To be served by first class mail this 31st day of December, 2001 on the following parties and attorneys of record

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